IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1086 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RAHUL SHARMA I P S

Versus

STATE OF GUJARAT

Appearance:

MR NIGAM R SHUKLA for Petitioner

MR PG DESAI, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 03/09/97

ORAL JUDGEMENT

Rule. Ld.PP Shri P.G.Desai waives the service of Rule for the respondent-State. Records and Proceedings were called. Therefore, with the consent of the parties, the matter is taken up for final hearing.

The petitioner, at the relevant time, was Addl.

Supdt. of Police of Jamnagar Rural Division and was working as SDPO of that Sub-division. Under him was Jamnagar Rural Police Station "B" Division where an offence of death came to be registered, as an accidental death. When it came to the notice of the petitioner, on going through the papers, he found that the entry of accidental death is not properly investigated because, the dead body did contain marks of violence which will indicate it to be, probably, a homicidal death.

He, therefore, issued crime memo, Annexure.A and gave very useful directions which ultimately led to lodging of a case for the offence under Section 302 of IPC.

At the end of the investigation, the chargesheet came to be filed and eventually, the accused came to be tried for the said offence by Sessions Case No.1 of 1996 and at the end, the trial Court acquitted the accused.

The ld.trial Judge, however, in his judgment dated 13.5.1997 made very strong observations in paragraph 28 at page nos.49 and 50 and also ordered departmental proceedings against the petitioner and directed the DSP accordingly.

The petitioner has come here challenging these adverse remarks as well as the aforesaid direction.

On going through the record as well as the judgment, in all, 12 witnesses were examined before the trial Court. Of them, two were Doctors and one was I.O. of this very case. One more I.O. Shri Maheshkumar Gupta relating to another case against the accused was also examined and that is how, there are four official witnesses leaving eight witnesses who could have said about the incident for which the accused was charged.

Of the said eight witnesses, four are prosecution witnesses. This would lead to remaining four witnesses. It being a case of death, circumstancial evidence was supposed to be brought about against the accused as per the case of the prosecution.

However, the peculiarity of this case is that, none of the witnesses have supported the case of the prosecution. The complainant happens to be the son-in-law of the deceased - witness no.2, witness no.3 is the owner of the field in which a well is situated and it was from this well that the dead body was found. The deceased was working for 15 long years as Watchman of

this witness.

As a result, none of the circumstances which the prosecution was relying upon for bringing the charge home against the accused could be brought on record.

The ld.Judge is right in lamenting the fact that the accused have developed a tendency of committing crime in a manner as to avoid detection or destroy the evidence so that they cannot be connected with the crime. At the same time, it should not be forgotten that, when the accused commits a crime, whatever be his mentality and intellectual ability, he would try to evade detection and would certainly take care to see that he is not connected with the crime. This, in essence, is the running battle between the accused and the police. This, therefore, should not have surprised the ld.Judge at all.

However, when one goes to the extent of this fact-situation, the offence and the visiting officer who was present for some of the period when the investigation was going on, has not taken proper care. The said document Annexure.A followed by Annexure.B where the petitioner has, in no uncertain terms, pulled up his subordinates for lack of diligence and proper inquiry.

This all could have avoided provided the ld. Judge had issued a notice to the petitioner and had given him an opportunity to explain. This is exactly what has contemplated by the Supreme Court in the case of Dr.Dilip Kumar Deka and anr. vs. State of Assam and anr., reported in 1966 (6) SCC 234.

In the aforesaid Supreme Court decision, it was the High Court of Assam which had made adverse remarks against Dr. Deka, and as expected, had come down heavily on the said Doctor. However, the Supreme Court has clearly indicated that the least that could have been done was to give an opportunity to the person against whom the remarks are being passed.

This petition is nothing else, but an attempt on the part of the petitioner to explain what has transpired. He has, thus, availed of an opportunity by placing his side of the story and I take it to be more than sufficient explanation, after having so averred. The petitioner has to be complimented as he was vigilent enough to find out the lacks and laxity on the part of his subordinates and had pulled them up well and proper.

Therefore, there is no scope for criticising,

much less, there could be any inquiry against him.

The petition is, therefore, allowed. The remarks contained in paragraph 28 of the judgment shall stand expunged. The order of inquiry is set aside. Rule is made absolute accordingly.

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